IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1325 (MS) OF 2004

Jeet Singh, son of Heera Lal, resident of Village Teda Ghat, P.S. Khatima, District U.S. Nagar. .....Petitioner.

Versus

1. Collector U.S. Nagar.
2. Tehsildar Khatima, District U.S. Nagar.
3. Manager Oriental Bank of Commerce, Branch Khatima, District U.S. Nagar.
4. Shri Chamman Singh, son of Shri Bhogi, resident of Village Bankatiya, P.S. Khatima, District U.S. Nagar.

.....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri K.S. Bora, counsel for the petitioner and Sri S.K. Jain, counsel for the respondents no. 3, Manager Oriental Bank of Commerce as well as Sri B.D. Kandpal on behalf of Sri Tehsildar Khatima.

Briefly stated, on 13th December, 2001 Sri Chamman Singh respondent no. 4 had taken loan of Rs. 2,60,000/- for agricultural purposes from Oriental Bank of Commerce for purchasing a tractor. There were two guarantors first the petitioner and the other Inderson, son of late Lachchhi. It appears that the loan was not repaid and hence a recovery certificate was issued against the petitioners as well as the borrower and the said guarantor to the extent of Rs. 3,52,360/-.

Counsel for the petitioner has submitted that he has already filed an objection before the Collector on 14th July, 2004 brining him to his notice that the recovery proceedings should be initiated first against the borrower and if the same remains unpaid, the guarantors may be held liable.

Counsel for the petitioner has submitted that in the present case, the recovery has been sent against the borrower as well as the guarantor at the same time without exhausting the mode under Section 279 of the U.P.Z.A. & L.R. Act.

However, Sri Sunil Kumar Jain, learned counsel for the respondent has submitted that the liability of the guarantor being co-extensive with the borrower, both are responsible for payment of the dues taken for the agricultural purposes. There is no dispute with the aforesaid proposition.

Section 279 provides the procedure for recovery of arrears of land revenue. It reads as under:-

“279. Procedure for recovery of an arrear of land revenue.-[(1)] An arrear of land rvenue4 may be rec overed by one or more of the following processes:

(a) by serving writ of demand or a citation to appear on any defaulter,

(b) by arrest and detention of his person,

(c) by attachment and sale of his movable property including produce,

(d) by attachment of the holding in respect of which the arrear is due,

(e) [by lease or sale] of the holding in respect of which the arrear is due,

(f) by attachment and sale of other immovable property of the defaulter, [and],

(g) by appointing a receiver of any property, movable or immovable of the defaulter.

[(2) The costs of any of the processes mentioned in sub-section (1) shall be added to and be recoverable in the same manner as the arrears of land revenue.]

Standing counsel has submitted that since the petitioner has already filed the objections before the Collector, the Collector shall decide the objections in the light of the provisions of Section 279 of the U.P.Z.A. & L.R. Act and if the arrears of land revenue can be realized by a writ of demand or citation to appear on a defaulter and further by attachment of the holding in respect of land for which the arrears are due, the same shall be realized accordingly.

The respondents no. 1 and 2 are directed to decide the representation in the in the light of the provision of Section 279 of the U.P.Z.A. & L.R.Act. After the disposal of the objection, the Collector shall be given liberty to proceed with the recovery proceedings.

For a period of three weeks from today, recovery proceedings shall remain in abeyance against the petitioner only. The petitioner is permitted to correct the date.

Consequently, subject to the aforesaid observation, the writ petition is disposed of.

Copy of the order be given today.

20.12.2004 (RAJESH TANDON, J.)

P.S.R.